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IN THE

Supreme Court of the United States

OCTOBER TERM, 1942

No. 347

21

ERNEST NEWTON KALB,

Petitioner,

vs.

YELLOW MANUFACTURING ACCEPTANCE
CORPORATION,

Respondent.

PETITION AND BRIEF.

On application for Writ of Certiorari to the United States
Circuit Court of Appeals for the Seventh Circuit.

ELMER McCLAIN,

Lima, Ohio,

Counsel for Petitioner.



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PETITION

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ERNEST NEWTON KALB,

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vs.

YELLOW MANUFACTURING ACCEPTANCE
CORPORATION,

Respondent.

PETITION

For a Writ of Certiorari to the United States Circuit Court
of Appeals for the Seventh Circuit.

(The brief in support of this petition begins at page 15.)

Note: All emphasis in this petition and in the accompanying brief is supplied except when otherwise stated.

Following the last page of the petition (page 14), and preceding the brief, there is inserted Section 75 of the Bankruptcy Act, which is involved in this cause.

To the Honorable Harlan F. Stone, Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner respectfully shows:

I.

A Summary Statement of the Matter Involved.

1. The Statute Involved.

There is involved Section 75 of the Bankruptcy Act, 11 U.S.C. 203, which is the farmer debtor law. A copy of it is inserted following page 14, the last page of this petition.

The proceeding in the bankruptcy court below never passed beyond Section 75 (a) to (r) which relates to composition and extension.

The portion of Section 75 most particularly involved is Section 75 (e), (n), (o), and (p).

There is also involved the Fifth Amendment to the Constitution.

2. The Decisions of the Courts Below.

The District Court rendered no opinion. The final order of the District Court issued without notice and without hearing, was entered October 20, 1941. R. 17 to 18.

The opinion of the Circuit Court of Appeals for the Seventh Circuit which affirmed the District Court is reported as *Kalb v. Yellow Manufacturing Acceptance Corporation*, C.C.A. 7, 127 Fed. (2d) 511, decided April 20, 1942. R. 30 to 33. The final order of the Appellate Court and the denial of the petition for rehearing are at R. 34 and 35.

3. The Procedure in the District Court.

While the farmer debtor's petition under Section 75 was pending on August 5, 1941, there regularly came on for hearing in the District Court a matter relating to real estate, involving the farmer debtor (petitioner here) and certain real estate mortgage holders. Neither the real estate nor the holders of the real estate mortgage are involved here. At the same session of the court and after the real estate matter was heard counsel for the Yellow Manufacturing Acceptance Corporation (respondent here), asked the judge for an order requiring the petitioner to surrender certain trucks which were subject to its chattel mortgage. A petition for such an order had, without notice or knowledge on the part of the petitioner been previously filed with the clerk of the court. No notice that this other petition was to be presented or heard had been given. It had no connection with the matter relating to real estate.

Counsel who had represented the petitioner in the real estate matter was asked by the judge whether he had anything to say on this second matter relating to the chattel security thus presented by the respondent. He answered that neither the farmer debtor (the petitioner here) nor his counsel had any notice or knowledge that the second motion had been filed or that it was to be then presented or heard and that he could not undertake to subject his client to the jurisdiction of the court concerning it or to make any further statement. So far as is known to petitioner and his counsel, nothing more occurred in relation to the subject until on October 20, 1941, when the order of that date was entered. R. 17 to 18. The first the petitioner and his counsel knew of the order was on October 23, 1941 when a copy was served upon the petitioner and another copy was received in the mail by his counsel. On October

30, 1941, the petitioner filed in the District Court his verified "Exceptions and Objections of Farmer Debtor to Order entered October 20, 1941" which more fully relates the facts here stated. R. 18 to 20. The petitioner gave no supersedeas bond and his trucks still remain in his possession. Notice of appeal was filed October 31, 1941. R. 21.

II.

Statement of the Basis of the Jurisdiction of This Court.

The jurisdiction of this court is conferred by Section 240(a) of the Judicial Code, 28 U.S.C. 347(a).

The petitioner has complied with Section 8(a) of the Act of February 13, 1925; 28 U.S.C. 350. The judgment of the Appellate Court below (R. 34) became final on June 9, 1942, when his petition for rehearing was denied. R. 35. This petition for certiorari is filed within three months thereafter.

The mandate of the Appellate Court has been stayed to August 31, 1942, and this petition for certiorari is filed prior thereto.¹

III.

The Questions Presented.

The questions presented are:

1.

Did the failure by the bankruptcy court to observe the procedure prescribed in Section 75 (o) cause the order to be unlawful?

¹ After the manuscript of this petition and brief had been sent to the printer, the mandate (which, as stated above, had been stayed by order of the appellate court to August 31, 1942, pending application for certiorari, and which stay order remains unrevoked so far as is known to petitioner) was issued to the District Court on August 21 by order of that court. (Ten days before the expiration of the stay as originally ordered.) The petitioner on August 21, 1942, forwarded to this court an application for stay of execution in the District Court, which was granted.

2.

Could the bankruptcy court lawfully issue the order of October 20 when the provisions of Section 75(n) and of Section 75(p) require that all of the farmer debtor's property shall be under the sole jurisdiction and control of the bankruptcy court and be subject to the payment of his debts in the manner provided in Section 75 and that said provisions apply to all proceedings in any court, to all officials, to all creditors, and to all of the farmer debtor's property?

3.

Did the order which required the farmer debtor to surrender his property unconditionally and deliver it to the mortgage holder free of all control and administration by the bankruptcy court violate the provision of Section 75(e) requiring the bankruptcy court to exercise control over the farmer debtor?

4.

Did the order which required the farmer debtor to surrender his property unconditionally and deliver it to the mortgage holder free of all control and administration by the bankruptcy court violate the general provisions and purpose of Section 75?

5.

May a bankruptcy court in a farmer debtor proceeding under Section 75 order the farmer debtor to deliver directly and unconditionally his mortgaged chattels to the holder of a mortgage lien thereon despite the provisions of Section 75(n), (o), and (p)?

6.

Regardless of the provisions of Section 75, did the manner of the issuance of the order, without notice of hearing, without hearing and without consent, render the order void, when the petitioner did not know that any application for the order had been filed or was to be heard?

IV.

Reasons Relied Upon for Allowance of a Writ of Certiorari.

The petitioner respectfully represents that special and important reasons necessitate the granting of a review on writ of certiorari to the appellate court below.

The interpretation of a statute of the United States is involved, namely Section 75 of the Bankruptcy Act, 11 U.S.C. 203 relating to farmer debtors.

1.

In disregard of the provision of Section 75(n) reposing exclusive jurisdiction in the bankruptcy court over all property of a farmer debtor who has filed a petition under Section 75, the appellate court below held that the bankruptcy court had discretion to order the farmer debtor to surrender his mortgage property and deliver it to the mortgage holder without the reservation of any jurisdiction or control in the bankruptcy court.

2.

Without observing the mandatory provision of Section 75(o), the bankruptcy court below, sustained by the appellate court, ordered the farmer debtor to surrender and deliver unconditionally to the mortgage holder certain chattel security which is a part of the farmer debtor's estate being administered under Section 75. Said Section 75(o) requires the following procedure before a court may permit a mortgage holder to proceed against security involved in a farmer debtor proceeding: (1) A petition made to the judge, (2) reference to the conciliation commissioner, (3) hearing by the conciliation commissioner, (4) report to the

judge by the conciliation commissioner, (5) an order by the judge granting the petition. The final order of October 20, 1941, R. 17 to 18, was issued without observance of the mandatory preliminaries.

3.

The bankruptcy court below, sustained by the appellate court, disregarded the mandatory provisions of Section 75(p) that the prohibitions of said Section 75(o) shall apply to all judicial or official proceedings in any court, or under the direction of any official, and shall apply to all creditors and to all of the property of the farmer debtor, and that all of his property shall be under the sole jurisdiction and control of the bankruptcy court and subject to the payment of his creditors under the provisions of Section 75. The order required the farmer debtor to "surrender and deliver" absolutely the chattel security to the mortgage holder free from any restriction or control whatsoever by the court or by the owner.

4.

The appellate court below held that the provision of Section 75(e) providing that "the court shall exercise control over the property of the farmer debtor" gave the bankruptcy court discretionary power to abandon and surrender all control and administration over such property if it should be subject to mortgage.

5.

The appellate court below held, in violation of the prescriptions of Section 75(e), (n), (o) and (p), that the bankruptcy court had a discretion whereby it could compel the farmer debtor to surrender all possession and control over his mortgaged property and surrender it uncon-

ditionally to the mortgage holder beyond the control of the court, whereas said Section 75(e), (n), (o), and (p), require the bankruptcy court to retain exclusive jurisdiction and control over the farmer debtor's property and to administer it for the payment of the farmer debtor's creditors as provided in Section 75.

6.

There is involved the interpretation of Section 75 of the Bankruptcy Act, 11 U.S.C. 203 generally, that is, whether the order conflicts with the general purpose of the statute.

The decision below is in conflict with the decisions of this court which have interpreted the provisions of Section 75.

7.

Kalb v. Feuerstein (1940), 308 U. S. 433, held that a state court has no power to proceed when a farmer debtor proceeding is pending in a bankruptcy court under Section 75. Because Section 75(p) makes the provisions of Section 75 applicable to all officials, to all courts, to all property, and to all creditors and requires the farmer debtor's property to remain subject to the sole jurisdiction and control of the bankruptcy court and subject to the payment of all debts as provided for in Section 75, said decision of this court is equally applicable to this order.

8.

The decision of the appellate court and the order of the bankruptcy court below are also in conflict with the decision of this court in *Adair v. Bank* (1938), 303 U. S. 350, which held that a bankruptcy court may not surrender, or require a farmer debtor to surrender, to a secured creditor the proceeds, of the use of property mortgaged to such secured creditor. The said order and decision below would

take from the farmer debtor all proceeds from the use of his property by compelling him to surrender such property unconditionally to the mortgage holder and out of the control and jurisdiction of the bankruptcy court.

9.

The decision of the appellate court and the order of the bankruptcy court below are also in conflict with the decisions of this court in *John Hancock v. Bartels* (1939), 308 U. S. 180; in *Gray v. Union Joint Stock Land Bank* (1939), 308 U. S. 523; and in *Morrison v. Federal Land Bank* (1939), 308 U. S. 524, which held that a bankruptcy court may not terminate its jurisdiction, control and administration over a farmer debtor's mortgaged property and may not surrender its jurisdiction and control of such property to a secured creditor who holds a mortgage lien thereon.

10.

Even if it could be assumed, and it can not be, that, as held by the appellate court below, the farmer debtor agreed with his secured creditor to make payments directly to the secured creditor, or to the conciliation commissioner to be held by such conciliation commissioner *ex cathedra* in a manner not authorized by the statute, he was bound to make such payments under penalty of losing his property and surrendering it from the jurisdiction and control of the bankruptcy court, then it is in conflict with the decision of this court in *Borchard v. California Bank* (1940), 310 U. S. 311, which held that even though payments were made by the farmer debtors directly to the mortgage holder pursuant to agreements between them and in compliance with orders of the bankruptcy court, such payments and such orders were violative of the mandatory and orderly procedure prescribed by Section 75.

11.

The decision of the appellate court and the order of the bankruptcy court below requiring the farmer debtor to surrender his property to the holder of a mortgage lien against it and thus remove it from the control and jurisdiction of the court are in conflict with the decision of this court in *Wright v. Logan* (1942), 315 U. S. 139, holding that a farmer debtor may not be deprived of the right to have his property administered under Section 75 by being compelled to surrender it to the holder of a mortgage lien against it.

12.

The said decision in holding that any general or statutory law outside of Section 75 would make the order complained of lawful is in conflict with the repeated decisions of this court that the provisions of Section 75 are mandatory and controlling over any other provision of law. Particularly they conflict with the decision of this court in *Benitez v. Bank* (1941), 313 U. S. 370, and in general they conflict with the tenor of the decisions of this court in:

Wright v. Vinton (1937), 300 U. S. 440;

First National Bank v. Beach (1937), 301 U. S. 435;

Adair v. Bank (1938), 303 U. S. 350;

Wright v. Union Central (1938), 304 U. S. 502;

John Hancock v. Bartels (1939), 308 U. S. 180;

Gray v. Union (1939), 398 U. S. 523;

Morrison v. Federal (1939), 308 U. S. 524;

Kalb v. Feuerstein (1940), 308 U. S. 433;

Borchard v. California Bank (1940), 310 U. S. 311;

Wright v. Union Central (1940), 311 U. S. 273;

Wright v. Logan (1942), 315 U. S. 139.

The decision of the appellate court and the order of the bankruptcy court below conflict with the uniform course of the decisions of this court holding that a bankruptcy court may not surrender its jurisdiction in bankruptcy but must administer the property coming within its jurisdiction.

13.

U. S. F. & G. v. Bray (1912), 225 U. S. 305, Page 218:

The bankruptcy court "was not at liberty to surrender its exclusive control over matters of administration" . . .

In this case the bankruptcy court by its express order granted leave to litigate in a state court and although no review of that order was ever sought it was declared void.

Isaacs v. Hobbs (1931), 282 U. S. 734. Page 739:

"The jurisdiction in bankruptcy is made exclusive in the interest of due administration of the estate and the preservation of the rights of both secured and unsecured creditors. This fact places it beyond the power of the court's officers to oust it by surrender of the property which has come into its possession. Indeed a court of bankruptcy itself is powerless to surrender under its control of the administration of the estate."

Gross v. Irving (1933), 289 U. S. 342. Page 344:

"Such jurisdiction having attached, control of the administration of the estate can not be surrendered even by the court itself."

Thompson v. Magnolia (1940), 309 U. S. 478. Page 630:

"A court of bankruptcy has an exclusive and non-delegable control over the administration of an estate in its possession."

14.

The decision of the appellate court and the order of the bankruptcy court are in conflict with the decision of other federal circuits.

The Second Circuit:

In re Mahaffey, C.C.A. 2 (1942), 129 Fed. (2d) 292. A bankruptcy court may not abdicate its statutory oversight in a farmer debtor proceeding.

The Eighth Circuit:

Naylor v. Cantley, C.C.A. 8 (1938), 96 Fed. (2d) 761. A real estate foreclosure action was pending in the United States District Court when the defendant in foreclosure filed on the bankruptcy side of the same court his petition as a farmer debtor. The Court proceeded with the sale in foreclosure. The appellate court held that ". . . since that [bankruptcy] court could not surrender its jurisdiction to any other court, it was incumbent upon the court of bankruptcy to administer the estate of the farmer debtor in accordance with Section 75" . . . That is, a District Court may not surrender the special jurisdiction under its bankruptcy power over to its jurisdiction in foreclosure previously acquired.

Chicago, etc. R. R. v. City of Owatonna, C.C.A. 8 (1941), 120 Fed. (2d) 226. Relative to an appeal under Section 77 relating to a railroad debtor proceeding, it was held that "there is no power in the officers of a bankruptcy court to affect this exclusive [bankruptcy] jurisdiction of that court, whether by waiver, estoppel or laches." . . .

15.

No decision has been found or is recollected in which a bankruptcy court has ordered a farmer debtor to surrender his chattel directly to the holder of a mortgage lien on it. The order in question appears to be without precedent.

16.

The decision of the appellate court below in holding that an order issued upon an application therefor, without any notice that said application would be heard, is a valid and binding order and within the power of the bankruptcy court to issue it, is in conflict with the decisions of this court in the following cases:

Voorhees v. Jackson (1836), 35 U. S. (10 Pet.), 449, 474;

Galpin v. Page (1874), 85 U. S. (18 Wall.) 350; 368;

Windsor v. McVeigh (1876), 93 U. S. 274;

Holden v. Hardy (1898), 169 U. S. 366, 389;

Ballard v. Hunter (1907), 204 U. S. 241;

Twining v. New Jersey (1908), 211 U. S. 78, 102;

Coe v. Armour (1917), 237 U. S. 413, 426;

Morgan v. United States (1938), 304 U. S. 1, 18.

Said decision is likewise in conflict with other Circuit Courts of Appeals decisions on the same subject, namely:

Sheets v. Livy, C.C.A. 4 (1938), 97 Fed. (2d) 674;

In re Rosser, C.C.A. 8 (1900), 101 Fed. 106;

Boyd v. Glucklich, C.C.A. 8 (1902), 116 Fed. 131;

In re Frank, C.C.A. 8 (1910), 182 Fed. 794.

The last three cited cases hold that a referee in regular bankruptcy may not issue an order granting a motion presented at a creditors' meeting without any notice thereof except the general notice that a creditors' meeting is to be held. Such an order was held to be void.

Said decision of the appellate court below has so far sanctioned a departure from the accepted and usual course of judicial proceedings by the lower district court as to call for an exercise of its power of supervision by this court. Said decision has sanctioned the violation of due process of law in a proceeding pending in the bankruptcy court in that at the time set for hearing of a matter involving a certain creditor another creditor, respondent here, presented a motion for the issuance of an order involving different property without any notice whatever having been given to the farmer debtor or his counsel that such a motion would be presented or heard or that such an order would be considered or issued.

Said order was issued in violation of the Fifth Amendment to the Constitution of the United States which prohibits the deprivation of property without due process of law.

Wherefore your petitioner prays that a writ of certiorari may issue to the Circuit Court of Appeals for the Seventh Circuit directing it to certify and send to this court a transcript of the record and proceedings in this cause so that it may be received and determined by this court. He further prays for all other relief that may be proper.

Respectfully submitted,

ELMER McCLAIN,

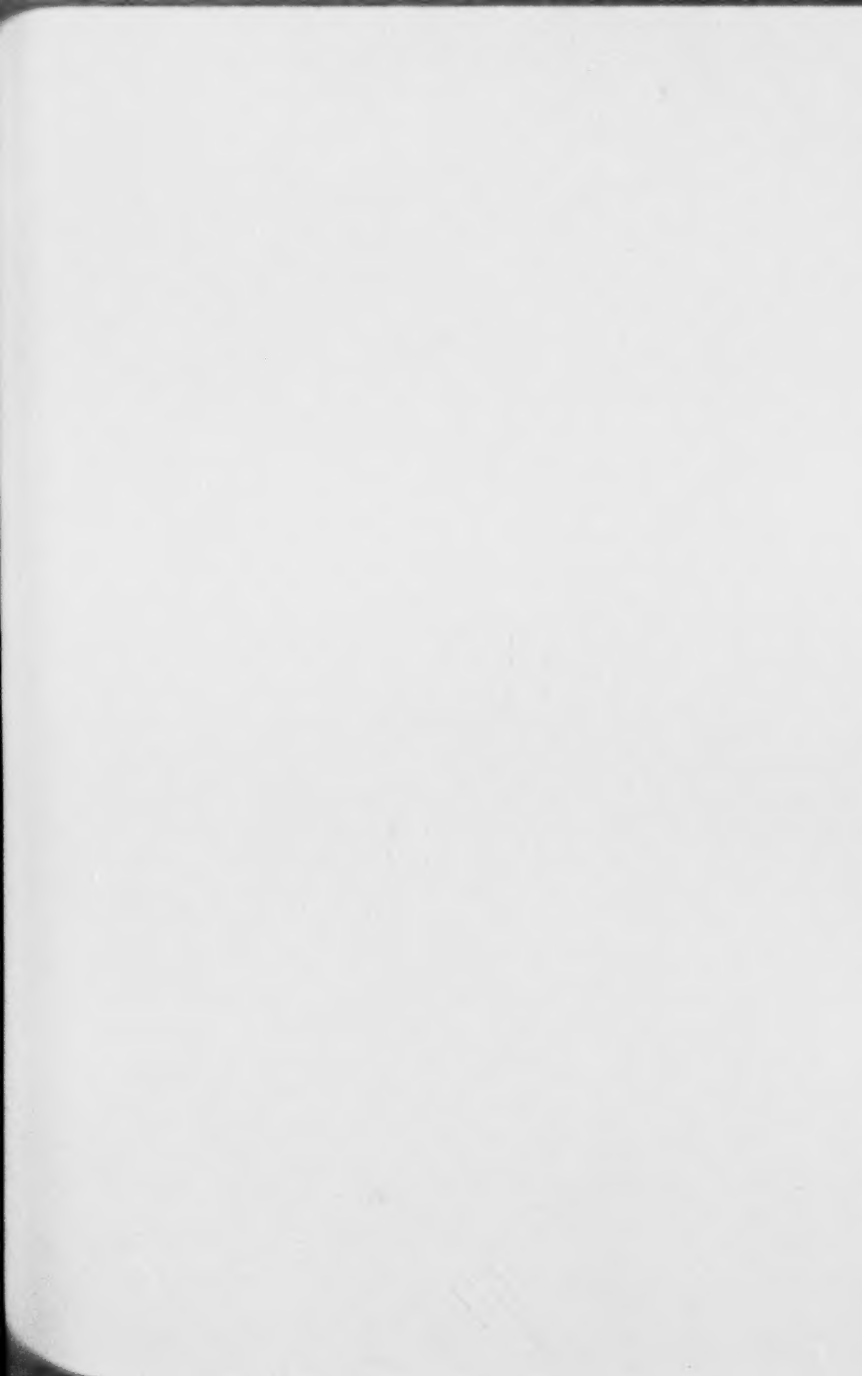
Lima, Ohio,

*Counsel for Ernest Newton Kalb,
Farmer Debtor Petitioner.*

Lima, Ohio

August 19, 1942.

Note: An official print of Section 75 of the Bankruptcy Act is inserted following this page.



AGRICULTURAL COMPOSITIONS AND EXTENSIONS

SECTION 75 OF THE BANKRUPTCY ACT AS AMENDED BY—

PUBLIC 296 OF THE SEVENTY-THIRD CONGRESS
PUBLIC 60 OF THE SEVENTY-FOURTH CONGRESS
PUBLIC 384 OF THE SEVENTY-FOURTH CONGRESS
PUBLIC 439 OF THE SEVENTY-FIFTH CONGRESS
PUBLIC 696 OF THE SEVENTY-FIFTH CONGRESS
PUBLIC 423 OF THE SEVENTY-SIXTH CONGRESS

TITLE 11, SECTION 203, UNITED STATES CODE

(Reprint of Senate Document No. 55, 75th Congress)



PRESENTED BY MR. NYE
FOR MR. FRAZIER

JUNE 10 (legislative day, MAY 28), 1940.—Ordered to be printed
with certain corrections

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1940

AGRICULTURAL COMPOSITIONS AND EXTENSION

SECTION II OF THE BUREAU OF AGRICULTURE
—

THE BUREAU OF AGRICULTURE, U. S. DEPARTMENT OF AGRICULTURE, has the honor to acknowledge the receipt of the following report from the Director of the Bureau of Agricultural Extension, and to publish the same in its annual report for the year 1875.

REPORT OF THE DIRECTOR OF THE BUREAU OF AGRICULTURAL EXTENSION

FOR THE YEAR 1875



WASHINGTON: GPO: 1876

For sale by the Superintendent of the Government Printing Office, Washington, D. C.

Price, 10 cents

AGRICULTURAL COMPOSITIONS AND EXTENSIONS

[PUBLIC—No. 420—72D CONGRESS]

[H. R. 14359]

AN ACT

To amend an Act entitled "An Act to establish a uniform system of bankruptcy throughout the United States," approved July 1, 1898, and Acts amendatory thereof and supplementary thereto.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act of July 1, 1898, entitled "An Act to establish a uniform system of bankruptcy throughout the United States," as amended by the Acts of February 5, 1903, June 15, 1906, June 25, 1910, March 2, 1917, January 7, 1922, May 27, 1926, and February 11, 1932, be, and it is hereby, amended by adding thereto a new chapter to read as follows:

"CHAPTER VIII

[As amended by the 73rd, 74th, 75th, and 76th Congresses]

"PROVISIONS FOR THE RELIEF OF DEBTORS

"SEC. 75. AGRICULTURAL COMPOSITIONS AND EXTENSIONS.—(a) Within thirty days after June 7, 1934, every court of bankruptcy of which the jurisdiction or territory includes a county or counties having an agricultural population (according to the last available United States census) of five hundred or more farmers shall appoint one or more referees to be known as 'conciliation commissioners', one such conciliation commissioner to be appointed for each county having an agricultural population of five hundred or more farmers according to said census: *Provided further,* That where any county in any such district contains a smaller number of farmers according to said census, for the purposes of this paragraph such county shall be included with one or more adjacent counties where the population of the counties so combined includes five hundred or more farmers, according to said census. In case more than one conciliation commissioner is appointed for a county, each commissioner shall act separately and shall have such territorial jurisdiction within the county as the court shall specify. A conciliation commissioner shall have a term of office for one year and may be removed by the court if his services are no longer needed or for other cause. No individual shall be eligible to appointment as a conciliation commissioner unless he is eligible for appointment as a referee¹ and in addition is a resident

¹Sec. 35 of Chandler Act, Public, 696, of the 75th Cong., requires all new referees to be attorneys.

of the county, familiar with agricultural conditions therein and not engaged in the farm-mortgage business, the business of financing farmers or transactions in agricultural commodities or the business of marketing or dealing in agricultural commodities or of furnishing agricultural supplies. In each judicial district the court may, if it finds it necessary or desirable, appoint a suitable person as a supervising conciliation commissioner. The supervising conciliation commissioner shall have such supervisory functions under this section as the court may by order specify.

"(b) Upon filing of any petition by a farmer under this section there shall be paid a fee of \$10 to be transmitted to the clerk of the court and covered into the Treasury. The conciliation commissioner shall receive as compensation for his services, a fee of \$25 for each case submitted to him, ~~and when docketed, to be paid out of the Treasury to be paid out of the Treasury when the conciliation commissioner completes the duties assigned to him by the court.~~ A supervising conciliation commissioner shall receive, as compensation for his services, a per diem allowance to be fixed by the court, in an amount not in excess of \$5 per day, together with subsistence and travel expenses in accordance with the law applicable to officers of the Department of Justice. Such compensation and expenses shall be paid out of the Treasury. If the creditors at any time desire supervision over the farming operations of a farmer, the cost of such supervision shall be borne by such creditors or by the farmer, as may be agreed upon by them, but in no instance shall the farmer be required to pay more than one-half of the cost of such supervision. Nothing contained in this section shall prevent a conciliation commissioner who supervises such farming operations from receiving such compensation therefor as may be so agreed upon. No fees, costs, or other charges shall be charged or taxed to any farmer or his creditors by any conciliation commissioner or with respect to any proceeding under this section, except as hereinbefore in this section provided. The conciliation commissioner may accept and avail himself of office space, equipment, and assistance furnished him by other Federal officials, or by any State, county, or other public officials. The Supreme Court is authorized to make such general orders as it may find necessary properly to govern the administration of the office of conciliation commissioner and proceedings under this section; but any district court of the United States may, for good cause shown and in the interests of justice, permit any such general order to be waived.

"(c) ~~At any time within 5 years after March 3, 1933,~~ prior to March 4, 1944, a petition may be filed by any farmer, stating that the farmer is insolvent or unable to meet his debts as they mature, and that it is desirable to effect a composition or an extension of time to pay his debts. The petition or answer of the farmer shall be accompanied by his schedules. The petition and answer shall be filed with the court, but shall, on request of the farmer or creditor, be received by the conciliation commissioner for the county in which the farmer resides and promptly transmitted by him to the clerk of the court for filing. If any such petition is filed, an order of adjudication shall not be entered except as provided hereinafter in this section.

"(d) After the filing of such petition or answer by the farmer, the farmer shall, within such time and in such form as the rules provide, file an inventory of his estate.

"(e) The conciliation commissioner shall promptly call the first meeting of creditors, stating in the notice that the farmer proposes to offer terms of composition or extension, and inclosing with the notice a summary of the inventory, a brief statement of the farmer's indebtedness as shown by the schedules, and a list of the names and addresses of the secured creditors and unsecured creditors, with the amounts owing to each as shown by the schedules. At the first meeting of the creditors the farmer may be examined, and the creditors may appoint a committee to submit to the conciliation commissioner a supplementary inventory of the farmer's estate. The conciliation commissioner shall, after hearing the parties in interest, fix a reasonable time within which application for confirmation shall be made, and may later extend such time for cause shown. After the filing of the petition and prior to the confirmation or other disposition of the composition or extension proposal by the court, the court shall exercise such control over the property of the farmer as the court deems in the best interests of the farmer and his creditors.

"(f) There shall be prepared by, or under the supervision of, the conciliation commissioner a final inventory of the farmer's estate, and in the preparation of such inventory the commissioner shall give due consideration to the inventory filed by the farmer and to any supplementary inventory filed by a committee of the creditors.

"(g) An application for the confirmation of a composition or extension proposal may be filed in the court of bankruptcy after, but not before, it has been accepted in writing, by a majority in number of all creditors whose claims have been allowed, including secured creditors whose claims are affected, which number shall represent a majority in amount of such claims.

"(h) A date and place, with reference to the convenience of the parties in interest, shall be fixed for a hearing upon each application for the confirmation of the composition or extension proposal and upon such objections as may be made to its confirmation.

"(i) The court shall confirm the proposal if satisfied that (1) it includes an equitable and feasible method of liquidation for secured creditors and of financial rehabilitation for the farmer; (2) it is for the best interests of all creditors; and (3) the offer and its acceptance are in good faith, and have not been made or procured except as herein provided, or by any means, promises, or acts herein forbidden. In applications for extensions the court shall require proof from each creditor filing a claim that such claim is free from usury as defined by the laws of the place where the debt is contracted.

"(j) The terms of a composition or extension proposal may extend the time of payment of either secured or unsecured debts, or both, and may provide for priority of payments to be made during the period of extension as between secured and unsecured creditors. It may also include specific undertakings by the farmer during the period of the extension, including provisions for payments on account, and may provide for supervisory or other control by the conciliation commissioner over the farmer's affairs during such period, and for the termination of such period of supervision or control under conditions specified: *Provided*, That the provisions of this section shall not affect the allowances and exemptions to debtors as are provided for bankrupts under title 11, chapter 3, section 24,

of the United States Code, and such allowances and exemptions shall be set aside for the use of the debtor in the manner provided for bankrupts.

"(k) Upon its confirmation, a composition or extension proposal shall be binding upon the farmer and his secured and unsecured creditors affected thereby: *Provided, however,* That such extension and/or composition shall not reduce the amount of or impair the lien of any secured creditor below the fair and reasonable market value of the property securing any such lien at the time that the extension and/or composition is accepted, but nothing herein shall prevent the reduction of the future rate of interest on all debts of the debtor, whether secured or unsecured.

"(l) Upon the confirmation of a composition the consideration shall be distributed under the supervision of the conciliation commissioner as the court shall direct, and the case dismissed: *Provided,* That the debts having priority of payment under title 11, chapter 7, section 104, of the United States Code, for bankrupt estates, shall have priority of payment in the same order as set forth in said section 104 under the provisions of this section in any distribution, assignment, composition, or settlement herein provided for. Upon the confirmation of an extension proposal the court may dismiss the proceeding or retain jurisdiction of the farmer and his property during the period of the extension in order to protect and preserve the estate and enforce through the conciliation commissioner the terms of the extension proposal. The court may, after hearing and for good cause shown, at any time during the period covered by an extension proposal that has been confirmed by the court, set the same aside, reinstate the case, and modify the terms of the extension proposal.

"(m) The judge may, upon the application of any party in interest, file at any time within six months after the composition or extension proposal has been confirmed, set the same aside and reinstate the case, if it shall be made to appear upon a trial that fraud was practiced in the procuring of such composition or extension, and that knowledge thereof has come to the petitioners since the confirmation thereof.

"(n) The filing of a petition or answer with the clerk of court, or leaving it with the conciliation commissioner for the purpose of forwarding same to the clerk of court, praying for relief under section 75 of this Act, as amended, shall immediately subject the farmer and all his property, wherever located, for all the purposes of this section, to the exclusive jurisdiction of the court, including all real or personal property, or any equity or right in any such property, including, among others, contracts for purchase, contracts for deed, or conditional sales contracts, the right or the equity of redemption where the period of redemption has not or had not expired, or where a deed of trust has been given as security, or where the sale has not or had not been confirmed, or where deed had not been delivered, at the time of filing the petition.

"In all cases where, at the time of filing the petition, the period of redemption has not or had not expired, or where the right under a deed of trust has not or had not become absolute, or where the sale has not or had not been confirmed, or where deed had not been delivered, the period of redemption shall be extended or the confirma-

tion of sale withheld for the period necessary for the purpose of carrying out the provisions of this section. The words 'period of redemption' wherever they occur in this section shall include any State moratorium, whether established by legislative enactment or executive proclamation, or where the period of redemption has been extended by a judicial decree. In proceedings under this section, except as otherwise provided herein, the jurisdiction and powers of the courts, the title, powers, and duties of its officers, the duties of the farmer, and the rights and liabilities of creditors, and of all persons with respect to the property of the farmer and the jurisdiction of the appellate courts, shall be the same as if a voluntary petition for adjudication had been filed and a decree of adjudication had been entered on the day when the farmer's petition, asking to be adjudged a bankrupt, was filed with the clerk of court or left with the conciliation commissioner for the purpose of forwarding same to the clerk of court."

"(o) Except upon petition made to and granted by the judge after hearing and report by the conciliation commissioner, the following proceedings shall not be instituted, or if instituted at any time prior to the filing of a petition under this section, shall not be maintained, in any court or otherwise, against the farmer or his property, at any time after the filing of the petition under this section, and prior to the confirmation or other disposition of the composition or extension proposal by the court:

"(1) Proceedings for any demand, debt, or account, including any money demand;

"(2) Proceedings for foreclosure of a mortgage on land, or for cancellation, rescission, or specific performance of an agreement for sale of land or for recovery of possession of land;

"(3) Proceedings to acquire title to land by virtue of any tax sale;

"(4) Proceedings by way of execution, attachment, or garnishment;

"(5) Proceedings to sell land under or in satisfaction of any judgment or mechanic's lien; and

"(6) Seizure, distress, sale, or other proceedings under an execution or under any lease, lien, chattel mortgage, conditional sale agreement, crop payment agreement, or mortgage.

"(p) The prohibitions of subsection (o) shall apply to all judicial or official proceedings in any court or under the direction of any official, and shall apply to all creditors, public or private, and to all of the debtor's property, wherever located. All such property shall be under the sole jurisdiction and control of the court in bankruptcy, and subject to the payment of the debtor farmer's creditors, as provided for in section 75 of this Act."

"(q) A conciliation commissioner shall upon request assist any farmer in preparing and filing a petition under this section and in all matters subsequent thereto arising under this section and farmers shall not be required to be represented by an attorney in any proceeding under this section.

"(r) For the purposes of this section, and section 4 (b), and section 74, the term 'farmer' includes not only an individual who is primarily bona fide personally engaged in producing products of the soil, but also any individual who is primarily bona fide personally engaged in dairy

farming, the production of poultry or livestock, or the production of poultry products or livestock products in their unmanufactured state, or the principal part of whose income is derived from any one or more of the foregoing operations, and includes the personal representative of a deceased farmer; and a farmer shall be deemed a resident of any county in which such operations occur."

"(s) Any farmer failing to obtain the acceptance of a majority in number and amount of all creditors whose claims are affected by a composition and/or extension proposal, or if he feels aggrieved by the composition and/or extension, may amend his petition or answer, asking to be adjudged a bankrupt. Such farmer may, at the same time, or at the time of the first hearing, petition the court that all of his property, wherever located, whether pledged, encumbered, or unencumbered, be appraised, and that his unencumbered exemptions, and unencumbered interest or equity in his exemptions, as prescribed by State law, be set aside to him, and that he be allowed to retain possession, under the supervision and control of the court, of any part or parcel or all of the remainder of his property, including his encumbered exemptions, under the terms and conditions set forth in this section. Upon such a request being made, the referee, under the jurisdiction of the court, shall designate and appoint appraisers, as provided for in this Act. Such appraisers shall appraise all of the property of the debtor, wherever located, at its then fair and reasonable market value. The appraisals shall be made in all other respects with rights of objections, exceptions, and appeals, in accordance with this Act: *Provided*, That in proceedings under this section, either party may file objections, exceptions, and take appeals within four months from the date that the referee approves the appraisal.

"(1) After the value of the debtor's property shall have been fixed by the appraisal herein provided, the referee shall issue an order setting aside to such debtor his unencumbered exemptions, and his unencumbered interest or equity in his exemptions, as prescribed by the State law, and shall further order that the possession, under the supervision and control of the court, of any part or parcel or all of the remainder of the debtor's property shall remain in the debtor, as herein provided for, subject to all existing mortgages, liens, pledges, or encumbrances. All such existing mortgages, liens, pledges, or encumbrances shall remain in full force and effect, and the property covered by such mortgages, liens, pledges, or encumbrances shall be subject to the payment of the claims of the secured creditors, as their interests may appear.

"(2) When the conditions set forth in this section have been complied with, the court shall stay all judicial or official proceedings in any court, or under the direction of any official, against the debtor or any of his property, for a period of three years. During such three years the debtor shall be permitted to retain possession of all or any part of his property, in the custody and under the supervision and control of the court, provided he pays a reasonable rental semiannually for that part of the property of which he retains possession. The first payment of such rental shall be made within one year of the date of the order staying proceedings, the amount and kind of such rental to be the usual customary rental in the community where the property is located, based upon the rental value, net income, and

earning capacity of the property. Such rental shall be paid into court, to be used, first, for payment of taxes and upkeep of the property, and the remainder to be distributed among the secured and unsecured creditors, and applied on their claims, as their interests may appear. The court, in its discretion, if it deems it necessary to protect the creditors from loss by the estate, and/or to conserve the security, may order sold any unexempt perishable property of the debtor, or any unexempt personal property not reasonably necessary for the farming operations of the debtor, such sale to be had at private or public sale, and may, in addition to the rental, require payments on the principal due and owing by the debtor to the secured or unsecured creditors, as their interests may appear, in accordance with the provisions of this Act, and may require such payments to be made quarterly, semiannually, or annually, not inconsistent with the protection of the rights of the creditors and the debtor's ability to pay, with a view to his financial rehabilitation.

"(3) At the end of three years, or prior thereto, the debtor may pay into court the amount of the appraisal of the property of which he retains possession, including the amount of encumbrances on his exemptions, up to the amount of the appraisal, less the amount paid on principal: *Provided*, That upon request of any secured or unsecured creditor, or upon request of the debtor, the court shall cause a reappraisal of the debtor's property, or in its discretion set a date for hearing, and after such hearing, fix the value of the property, in accordance with the evidence submitted, and the debtor shall then pay the value so arrived at into court, less payments made on the principal, for distribution to all secured and unsecured creditors, as their interests may appear, and thereupon the court shall, by an order, turn over full possession and title of said property, free and clear of encumbrances to the debtor: *Provided*, That upon request in writing by any secured creditor or creditors, the court shall order the property upon which such secured creditors have a lien to be sold at public auction. The debtor shall have ninety days to redeem any property sold at such sale, by paying the amount for which any such property was sold, together with 5 per centum per annum interest, into court, and he may apply for his discharge, as provided for by this Act. If, however, the debtor at any time fails to comply with the provisions of this section, or with any orders of the court made pursuant to this section, or is unable to refinance himself within three years, the court may order the appointment of a trustee, and order the property sold or otherwise disposed of as provided for in this Act.

"(4) The conciliation commissioner, appointed under subsection (a) of section 75 of this Act, as amended, shall continue to act, and act as referee, when the farmer debtor amends his petition or answer, asking to be adjudged a bankrupt under the provisions of subsection (s) of section 75 of this Act, and continue so to act until the case has been finally disposed of. The conciliation commissioner, as such referee, shall receive such an additional fee for his services as may be allowed by the court, not to exceed \$35 in any case, to be paid out of the bankrupt's estate. No additional fees or costs of administration or supervision of any kind shall be charged to the farmer debtor when or after he amends his petition or answer, asking to be adjudged a bankrupt, under subsection (s) of section 75 of

this Act, but all such additional filing fees or costs of administration or supervision shall be charged against the bankrupt's estate. Conciliation commissioners and referees appointed under section 75 of this Act shall be entitled to transmit in the mails, free of postage, under cover of a penalty envelope, all matters which relate exclusively to the business of the courts, including notices to creditors. If, at the time that the farmer debtor amends his petition or answer, asking to be adjudged a bankrupt, a receiver is in charge of any of his property, such receiver shall be divested of possession, and the property returned to the possession of such farmer, under the provisions of this Act. The provisions of this Act shall be held to apply also to partnerships, common, entirety, joint, community ownerships, or to farming corporations where at least 75 per centum of the stock is owned by actual farmers, and any such parties may join in one petition.

"(5) This Act shall be held to apply to all existing cases now pending in any Federal court, under this Act: as well as to future cases; and all cases that have been dismissed by any conciliation commissioner, referee, or court because of the Supreme Court decision holding the former subsection(s) unconstitutional, shall be promptly reinstated, without any additional filing fees or charges.

"(5) This Act shall be held to apply to all existing cases now pending in any Federal Court, under this Section, as well as to future cases. All cases under this Section that have been dismissed by any conciliation commissioner, referee, or Federal Court because such Court erroneously assumed or held that subsection(s) of section 75 of this Act was unconstitutional, shall be promptly reinstated, without any additional filing fees or charges. Any farm debtor who has filed under the General Bankruptcy Act may take advantage of this section upon written request to the court; and a previous discharge of the debtor under any other section of this Act shall not be grounds for denying him the benefits of this section.

"(6) This Act is hereby declared to be an emergency measure and if in the judgment of the court such emergency ceases to exist in its locality, then the court, in its discretion, may shorten the stay of proceedings herein provided for and proceeded to liquidate the estate.

